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Of Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

VANESSA THARP, an individual,

Plaintiff,

v.

DELTA AIR LINES, INC., a Delaware
Corporation,

Defendant.

Case No.

COMPLAINT FOR DAMAGES

DEMAND FOR JURY TRIAL

COMES NOW the Plaintiff, by and through her undersigned attorneys, and alleges as follows:

I. THE PARTIES

1.1 Plaintiff Vanessa Tharp is now, and at all times material hereto, has been an individual residing within Multnomah County, Oregon.

1.2 At all times material hereto, Defendant DELTA AIR LINES, INC. (hereinafter “Delta”) is and has been a Delaware corporation headquartered at 1030 Delta Blvd., Atlanta, GA 30354, and doing business in Multnomah County, Oregon. At all times material hereto, Delta has maintained a registered agent for service in Salem, Oregon.

II. JURISDICTION AND VENUE

2.1 Ms. Tharp re-alleges and incorporates by reference all preceding paragraphs in this complaint as if fully set forth herein.

2.2 Federal Question jurisdiction is proper under 28 U.S.C. §1331. The subject matter of this claim involves an accident that occurred during international air travel, and Ms. Tharp’s cause of action arises from a treaty agreement, namely Convention for the Unification of Certain Rules Relating to International Carriage by Air, opened for signature on May 18, 1999, reprinted in S. Treaty Doc. 106-45 at 27 (2000) 1999 WL 33292734 (entered into force November 4, 2003) (treaty), commonly referred to as the Montreal Convention (hereinafter “Montreal Convention”).

2.3 Diversity jurisdiction is proper under 28 U.S.C. §1332. The parties are completely diverse in citizenship and the amount in controversy exceeds \$75,000.

2.4 The United States District Court for the District of Oregon has jurisdiction over Delta and is a proper venue for this action under Article 33 of the Montreal Convention because the State of Oregon is: (1) a state in which Delta has a place of business through which the contract was made; and/or, (2) was and is the principal and permanent place of residency for Ms. Tharp and a place from which Delta operates services for the carriage of persons by air from premises leased or owned by the carrier itself or by another carrier with which it has a commercial agreement.

2.5 This Court has personal jurisdiction over Delta, which has sufficient minimum contacts with, and has purposefully availed itself of the benefits of doing business in this State and District—in particular at Portland International Airport in Multnomah County.

2.6 Divisional venue lies in the Portland Division because Multnomah County is where a substantial part of the events or omissions giving rise to the claim occurred.

III. FACTS

3.1 Ms. Tharp re-alleges and incorporates by reference all preceding paragraphs in this complaint as if fully set forth herein.

3.2 Prior to August 30, 2019, Ms. Tharp and Delta entered into a contract for international carriage, as that term is known and defined in Article 1 of the Montreal Convention, providing Ms. Tharp with roundtrip international travel as part of a round trip itinerary. The outgoing portion of the itinerary provided for travel by air from Portland, Oregon, to Atlanta, Georgia, to Mexico City. The return portion of the itinerary provided for travel by air from Mexico City to Los Angeles, California, to Portland, Oregon.

3.3 The parties entered into this contract for international carriage while Ms. Tharp was in Portland, Oregon.

3.4 Pursuant to this contract for international carriage, on or about August 30, 2019, Ms. Tharp was a passenger on Delta Air Lines Flight 748 from Los Angeles, California to Portland, Oregon.

3.5 On the flight, Ms. Tharp was seated in a window seat in business class.

3.6 A man believed, and therefore alleged, to be named “Bob” sat next to Ms. Tharp.

3.7 Bob was obviously impaired by drugs or alcohol when he boarded the flight. Bob continued drinking alcohol on the flight and also consumed marijuana infused pretzels.

3.8 As the flight progressed, Bob’s behavior escalated from awkward to sexually aggressive. Bob made numerous remarks and advances of a sexual nature.

3.9 Bob slapped Ms. Tharp’s arm numerous times. Although the intent of these slaps was unclear, they were significant enough contacts to cause physical pain.

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3.10 Bob also touched Ms. Tharp's breast three times. Based on the context of the touches and the manner in which the touches occurred, Bob's intent in touching Ms. Tharp's breast was clearly nonconsensual and for the purpose of Bob's sexual gratification. These touches were both harmful and offensive to Ms. Tharp.

IV. CAUSE OF ACTION

4.1 Ms. Tharp re-alleges and incorporates by reference all preceding paragraphs in this complaint as if fully set forth herein.

4.2 At the time of this incident, Delta was engaged in international carriage as defined in Article 1 of the Montreal Convention, and the Montreal Convention is therefore applicable to this action, pursuant to that same Article.

4.3 Pursuant to Articles 17 and 21 of the Montreal convention, Delta is strictly liable for damage sustained in the case of bodily injury to a passenger on board the aircraft up to 128,821 Special Drawing Rights. Delta is also liable for damages beyond 128,821 Special Drawing Rights unless Delta proves that (a) such damage was not due to its negligence, wrongful act, or omission of Delta or its servants or agents or (b) such damage was due solely to the negligence or other wrongful act or omission of a third party.

4.4 As a result of the series of sexually motivated battery on or about August 30, 2019, and their aftermath, Ms. Tharp suffered pain, shock, emotional distress, embarrassment, mortification, anxiety, anguish, loss of enjoyment of life, loss of past and future income, past and future medical expenses, and further injuries and damages as will be proven at trial.

4.5 As a direct and proximate result of the incident described herein, and the negligent and tortious actions of the defendants, Ms. Tharp has suffered injuries and damages as are described below.

V. DAMAGES

5.1 Ms. Tharp re-alleges and incorporates by reference all preceding paragraphs in this complaint as if fully set forth herein.

5.2 As a direct and proximate result of the incident described herein, and the negligent and tortious actions of the defendants, Ms. Tharp has suffered in the past, continues to suffer presently, and will suffer in the future, damages which include, but are not limited to, the following: physical pain and suffering; shock; emotional distress; embarrassment; mortification; anxiety; anguish; depression; loss of enjoyment of life; loss of income; expense of medical care, including counseling, and other medical special damages; and further injuries and damages as will be proven at trial.

V. PRAYER FOR RELIEF

WHEREFORE, Ms. Tharp prays for judgment against the Defendants jointly and severally, in amounts to be proven at trial, for damages as outlined above, and as follows:

- 6.1 For Ms. Tharp's general damages for pain, shock, emotional distress, embarrassment, mortification, anxiety, anguish, and loss of enjoyment of life as set forth above.
- 6.2 For all past, present and future special damages, including, but not limited to, all medical expenses, lost earnings and earning capacity, and all other recoverable special damages as may result from the injuries to Ms. Tharp alleged herein.
- 6.3 For all other general and special damages recoverable under Oregon State law, the Montreal convention, or any other applicable law or treaty.

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- 6.4 For pre- and post-judgment interest.
- 6.5 For costs, including reasonable attorneys' fees as allowed by law.
- 6.6 For such other and further relief as the Court may deem just and equitable.

DATED this 14th day of February, 2020.

KRUTCH LINDELL BINGHAM JONES, P.S.

By: /s/ J. Nathan Bingham
J. Nathan Bingham, *pro hac vice* admission
pending

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